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10 SAN FRANCISCO BAYKEEPER  
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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION  
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SAN FRANCISCO BAYKEEPER, a non-profit  
corporation,

Plaintiff,

v.

MARIN SANITARY SERVICE,

Defendant.

Civil No. 3:14-CV-5312

[PROPOSED] THIRD AMENDMENT TO  
CONSENT DECREE

(Federal Water Pollution Control Act, 33  
U.S.C. § 1251 *et seq.*)

**THIRD AMENDMENT TO CONSENT DECREE**

This Third Amendment to Consent Decree (“Third Amendment”) is entered into by and between San Francisco Baykeeper (“Baykeeper”) and Marin Sanitary Service (“MSS”) (collectively “Parties”) for the purpose of modifying certain terms in the Consent Decree.

**RECITALS**

WHEREAS, to resolve the lawsuit brought by Baykeeper against MSS under the Federal Water Pollution Control Act, 33 U.S.C. section 1251 *et seq.*, the Parties agreed to resolve the lawsuit through settlement to avoid the costs and uncertainties of further litigation;

WHEREAS, the Court entered the Consent Decree between Baykeeper and MSS as an Order of the Court on June 24, 2015, *see* Dkt. 19;

WHEREAS, the Court entered the First Amendment to Consent Decree between Baykeeper and MSS as an Order of the Court on September 15, 2017, *see* Dkt. 23;

WHEREAS, the Court entered the Second Amendment to Consent Decree between Baykeeper and MSS as an Order of the Court on December 18, 2019, *see* Dkt. 27;

WHEREAS, the Second Amendment to Consent Decree was scheduled to terminate on September 30, 2021;

WHEREAS, additional best management practices (BMPs) failed to reduce pollutant loading for metals at all drainage areas to below Target Levels during the 2020-2021 wet season;

WHEREAS, on September 16, 2021, Baykeeper notified MSS pursuant to paragraph 27 of the Consent Decree via email (“Dispute Resolution”) that a breach of certain terms of the Consent Decree had occurred, specifically relating to BMPs.

WHEREAS, the Parties have met and conferred numerous times over additional BMPs that would result in adequate pollutant loading reductions, *see* Dkt. 28;

WHEREAS, pursuant to paragraph 1 of the Second Amendment to Consent Decree (Dkt. 27), the Consent Decree shall not terminate until Dispute Resolution is completed;

WHEREAS, in order to complete Dispute Resolution, the Parties have agreed that MSS will implement the following BMPs during the 2022-2023 and 2023-2024 wet seasons:

- 1 • Beginning with the 2022-2023 wet season, MSS shall contract with a third-party  
2 to perform stormwater sampling services;
- 3 • Beginning with the 2022-2023 wet season, MSS shall increase daily sweeping in  
4 area MS-A to four times per day and log all sweeping activities in the Sweeping  
5 Log;
- 6 • MSS shall replace the drop inlet filters at MS-A on a monthly basis by October 1,  
7 2022;
- 8 • If sampling results from the first qualified storm event (“QSE”) during the 2022-  
9 2023 wet season indicate additional pollutant loading reductions are necessary at  
10 MS-A, then MSS shall replace the drop inlet filters at MS-A on a bi-weekly basis  
11 within thirty (30) days of receipt of the laboratory report from the first qualified  
12 storm event of the 2022-2023 wet season.
- 13 • By February 1, 2023, MSS shall collect and divert non-industrial stormwater from  
14 MSS’s lessee, A&S Landscaping (located within sub-drainage area 2B), directly  
15 to the municipal separate storm sewer system, preventing commingling with  
16 industrial stormwater;
- 17 • MSS shall operate the treatment system at MS-B to treat industrial stormwater  
18 from the remainder of sub-drainage area 2B during the 2022-2023 wet season;
- 19 • If sampling results during the 2022-2023 wet season indicate additional pollutant  
20 loading reductions are necessary at MS-B, then MSS shall review additional  
21 BMPs at sub-drainage area 2A and consider relocating the treatment system closer  
22 to sub-drainage area 2A prior to October 1, 2023;
- 23 • Beginning with the 2022-2023 wet season, MSS shall sweep internal roadways  
24 and sub-drainage area 3A using the Lay-Mor SM-300 sweeper three times per day  
25 and log all sweeping activities in the Sweeping Log;
- 26 • Beginning with the 2022-2023 wet season, MSS shall collect and analyze effluent  
27 samples from the treatment systems at MS-B and MS-C;
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1 WHEREAS, in order to allow MSS time to implement additional BMPs to achieve further  
2 pollutant loading reductions, the Parties wish to again extend the term of the Consent Decree.

3 **NOW THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE PARTIES**  
4 **AND ADJUDGED, ORDERED, AND DECREED BY THE COURT AS FOLLOWS:**

5 1. Paragraph 34 of the Consent Decree shall be amended as follows: This Third  
6 Amendment to Consent Decree shall continue in effect until September 30, 2024 (the “term”), at  
7 which time the Third Amendment to Consent Decree, and all obligations under it, shall terminate,  
8 unless the Parties are engaged in Dispute Resolution pursuant to Paragraph 27 of the Consent  
9 Decree.

10 2. Paragraph 5.c.iii of the Consent Decree shall be added as follows: MSS shall  
11 implement the following additional BMPs:

12 a. Beginning with the 2022-2023 wet season, MSS shall contract with a  
13 third-party to perform stormwater sampling services;

14 b. Beginning with the 2022-2023 wet season, MSS shall increase daily  
15 sweeping in area MS-A to four times per day and log all sweeping activities in the Sweeping  
16 Log;

17 c. MSS shall replace the drop inlet filters at MS-A on a monthly basis by  
18 October 1, 2022;

19 d. If sampling results from the first qualified storm event (“QSE”) during the  
20 2022-2023 wet season indicate additional pollutant loading reductions are necessary at MS-A,  
21 then MSS shall replace the drop inlet filters at MS-A on a bi-weekly basis within thirty (30) days  
22 of receipt of the laboratory report from the first qualified storm event of the 2022-2023 wet  
23 season.

24 e. By February 1, 2023, MSS shall collect and divert non-industrial  
25 stormwater from MSS’s lessee, A&S Landscaping (located within sub-drainage area 2B), directly  
26 to the municipal separate storm sewer system, preventing commingling with industrial  
27 stormwater;  
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1 f. MSS shall operate the treatment system at MS-B to treat industrial  
2 stormwater from the remainder of sub-drainage area 2B during the 2022-2023 wet season;

3 g. If sampling results during the 2022-2023 wet season indicate additional  
4 pollutant loading reductions are necessary at MS-B, then MSS shall review additional BMPs at  
5 sub-drainage area 2A and consider relocating the treatment system closer to sub-drainage area 2A  
6 prior to October 1, 2023;

7 h. Beginning with the 2022-2023 wet season, MSS shall sweep internal  
8 roadways and sub-drainage area 3A using the Lay-Mor SM-300 sweeper three times per day and  
9 log all sweeping activities in the Sweeping Log;

10 i. Beginning with the 2022-2023 wet season, MSS shall collect and analyze  
11 effluent samples from the treatment systems at MS-B and MS-C;

12 3. Paragraph 26 of the Consent Decree shall be amended as follows: Compliance  
13 Monitoring Funds: MSS provided Baykeeper a total twelve thousand dollars (\$12,000), four  
14 thousand dollars (\$4,000) annually, for costs and fees associated with monitoring MSS's  
15 compliance with the Consent Decree through the original termination date of this agreement.  
16 The total compliance monitoring fund payment was paid to Baykeeper within thirty (30) days  
17 after the original Effective Date. MSS provided Baykeeper an additional five thousand dollars  
18 (\$5,000) annually for costs and fees associated with monitoring MSS's compliance with the First  
19 Amendment to Consent Decree through the extended termination date of this agreement, or ten  
20 thousand dollars (\$10,000) total. MSS provided Baykeeper with an additional eight thousand  
21 dollars (\$8,000) annually for costs and fees associated with monitoring MSS's compliance with  
22 the Second Amendment to Consent Decree through the extended termination date of this  
23 agreement, or sixteen thousand dollars (\$16,000) total. MSS shall provide an additional eight  
24 thousand dollars (\$8,000) per year for costs and fees associated with meeting and conferring  
25 during the 2021-2022 wet season and monitoring MSS's compliance with the Third Amendment  
26 to Consent Decree through the extended termination date of this agreement, totaling twenty-four  
27 thousand dollars (\$24,000). MSS shall make the additional compliance monitoring fund payment  
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1 payable to Baykeeper within thirty (30) days after the Effective Date of the Third Amendment to  
2 Consent Decree.

3 4. Baykeeper shall submit this Third Amendment to the U.S. Department of Justice  
4 (DOJ) and the U.S. Environmental Protection Agency within three (3) business days of the  
5 Parties' execution of this Third Amendment for agency review consistent with 40 C.F.R. § 135.5.  
6 After DOJ has notified the Court or the Parties that it does not object to the Third Amendment or  
7 the 45-day agency review period has expired, whichever is earlier, Baykeeper shall promptly  
8 request that the Court enter this Third Amendment.

9 5. The Effective Date of the Third Amendment shall be the date on which DOJ  
10 approves the Third Amendment.

11 6. All other terms and conditions in the Consent Decree not modified by this Third  
12 Amendment shall remain in full force and effect.

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14 SAN FRANCISCO BAYKEEPER

15 Date:

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18 SEJAL CHOKSI-CHUGH  
19 Executive Director

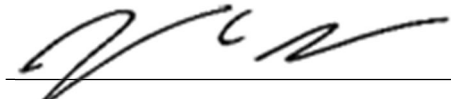
20 MARIN SANITARY SERVICE

21 Date:

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24 PATTY GARBARINO  
25 President

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27 APPROVED AND SO ORDERED, this 2nd day of February 2023.  
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2 UNITED STATES CHIEF MAGISTRATE JUDGE

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